

SENATE BILL 790
EMERGENCY BILL

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2004 Regular Session
4r2959
CF 4r1989

By: **Senators Munson, Hafer, and Mooney**
Introduced and read first time: February 16, 2004
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **PenMar Development Corporation**

3 FOR the purpose of providing certain affirmations of the General Assembly with
4 regard to the establishment of PenMar Development Corporation; altering the
5 membership of the Board of Directors for the Corporation; requiring certain
6 members of the Washington County Delegation to appoint certain voting
7 members to the Board of Directors; requiring the Washington County Board of
8 County Commissioners to appoint certain voting members to the Board of
9 Directors; requiring certain individuals or their designees to serve as nonvoting
10 members of the Board of Directors; altering the term of office and placing
11 certain term limits on a member of the Board of Directors; providing for the
12 method of filling a vacancy on the Board of Directors; requiring that certain
13 members of the Board of Directors meet certain residency requirements;
14 altering the number of members of the Board of Directors that constitute a
15 quorum; providing for the removal of certain members of the Board of Directors;
16 requiring that the Executive Director of the Corporation may not be employed in
17 certain positions under certain circumstances, may not receive certain
18 compensation, and shall meet certain residency requirements; requiring the
19 Washington County Board of County Commissioners to approve any change
20 made to the bylaws for the Corporation; requiring the Secretary of Business and
21 Economic Development to review and comment on certain agreements involving
22 the Corporation; requiring the Washington County Board of County
23 Commissioners to approve certain agreements involving the Corporation;
24 requiring the Washington County Board of County Commissioners to approve
25 certain bonds issued on behalf of the Corporation; requiring the Corporation to
26 submit an annual report to certain individuals; clarifying that meetings of the
27 Board of Directors are subject to the Open Meetings Act; requiring the Board of
28 Directors to conduct certain meetings that allow certain individuals to address
29 certain concerns to the Board of Directors; providing for the terms of office for
30 the Board of Directors; prohibiting certain individuals from serving on the
31 Board of Directors; defining a certain term; providing for the application of this
32 Act; making this Act an emergency measure; and generally relating to the
33 PenMar Development Corporation.

34 BY adding to

1 Article 83A - Department of Business and Economic Development
2 Section 5-1201(j) and 5-1211
3 Annotated Code of Maryland
4 (2003 Replacement Volume)

5 BY repealing and reenacting, with amendments,
6 Article 83A - Department of Business and Economic Development
7 Section 5-1202(a), 5-1203, 5-1204(a), 5-1205, 5-1206(a), 5-1209(f), and
8 5-1210(a)
9 Annotated Code of Maryland
10 (2003 Replacement Volume)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article 83A - Department of Business and Economic Development**

14 5-1201.

15 (J) "WASHINGTON COUNTY DELEGATION" MEANS THE SENATORS AND
16 DELEGATES WHO ARE ELECTED FROM WASHINGTON COUNTY OR ANY PORTION OF
17 WASHINGTON COUNTY.

18 5-1202.

19 (a) (1) The General Assembly declares and finds that the economy of
20 Washington County will be greatly impacted by the closure of Fort Ritchie.

21 (2) The General Assembly recognizes that, while this closure will result
22 in economic contraction and dislocation, it also affords opportunities to expand
23 productive employment and expand the State's economy and tax base.

24 (3) THE GENERAL ASSEMBLY AFFIRMS THAT THE ESTABLISHMENT OF
25 THE CORPORATION IS TO RESTORE JOBS TO THE FORMER MILITARY BASE, PROVIDE
26 ECONOMIC DEVELOPMENT OPPORTUNITIES FOR WASHINGTON COUNTY, AND
27 ENHANCE THE COMMERCIAL AND INDUSTRIAL TAX BASE FOR WASHINGTON
28 COUNTY.

29 5-1203.

30 (a) (1) The Corporation is a body politic and corporate and is constituted as
31 a public instrumentality of the State of Maryland.

32 (2) The exercise by the Corporation of the powers conferred by this
33 subtitle shall be deemed to be the performance of an essential public function.

34 (b) [(1)] A Board of Directors shall manage the affairs of the Corporation and
35 shall exercise all of its corporate powers.

1 [(2) (i)] (C) (1) The Board of Directors [shall consist of 15 members
2 appointed by the Board of County Commissioners of Washington County.

3 (ii) The Secretary of Business and Economic Development, the
4 Executive Director of the Maryland Economic Development Corporation, and the
5 Executive Director of the Washington County Economic Development Commission
6 shall be ex officio members] CONSIST OF THE FOLLOWING NINE VOTING MEMBERS:

7 (I) TWO INDIVIDUALS APPOINTED BY THE SENATE MEMBERS OF
8 THE WASHINGTON COUNTY DELEGATION;

9 (II) TWO INDIVIDUALS APPOINTED BY THE HOUSE MEMBERS OF
10 THE WASHINGTON COUNTY DELEGATION;

11 (III) FOUR INDIVIDUALS APPOINTED BY THE WASHINGTON COUNTY
12 BOARD OF COUNTY COMMISSIONERS; AND

13 (IV) ONE REPRESENTATIVE OF THE HAGERSTOWN-WASHINGTON
14 COUNTY ECONOMIC DEVELOPMENT COMMISSION APPOINTED BY THE WASHINGTON
15 COUNTY BOARD OF COUNTY COMMISSIONERS.

16 (2) (I) AN INDIVIDUAL APPOINTED BY THE SENATE AND HOUSE
17 MEMBERS OF THE WASHINGTON COUNTY DELEGATION UNDER PARAGRAPH (1) OF
18 THIS SUBSECTION MAY NOT BE A MEMBER OF THE WASHINGTON COUNTY
19 DELEGATION.

20 (II) AN INDIVIDUAL APPOINTED BY THE WASHINGTON COUNTY
21 BOARD OF COUNTY COMMISSIONERS UNDER PARAGRAPH (1) OF THIS SUBSECTION
22 MAY NOT BE A MEMBER OF THE WASHINGTON COUNTY BOARD OF COUNTY
23 COMMISSIONERS.

24 (D) IN ADDITION TO THE NINE VOTING MEMBERS UNDER SUBSECTION (C) OF
25 THIS SECTION, THE BOARD OF DIRECTORS SHALL CONSIST OF THE FOLLOWING FIVE
26 NONVOTING MEMBERS:

27 (1) ONE MEMBER OF THE WASHINGTON COUNTY DELEGATION,
28 APPOINTED BY THE CHAIRMAN OF THE WASHINGTON COUNTY DELEGATION, WITH
29 THE ADVICE AND CONSENT OF THE WASHINGTON COUNTY DELEGATION;

30 (2) ONE MEMBER OF THE WASHINGTON COUNTY BOARD OF COUNTY
31 COMMISSIONERS, APPOINTED BY THE PRESIDENT OF THE WASHINGTON COUNTY
32 BOARD OF COUNTY COMMISSIONERS, WITH THE ADVICE AND CONSENT OF THE
33 WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS;

34 (3) THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT, OR
35 THE SECRETARY'S DESIGNEE;

36 (4) THE EXECUTIVE DIRECTOR OF THE MARYLAND ECONOMIC
37 DEVELOPMENT CORPORATION, OR THE EXECUTIVE DIRECTOR'S DESIGNEE; AND

1 (5) THE EXECUTIVE DIRECTOR OF THE HAGERSTOWN-WASHINGTON
2 COUNTY ECONOMIC DEVELOPMENT COMMISSION, OR THE EXECUTIVE DIRECTOR'S
3 DESIGNEE.

4 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
5 VOTING MEMBERS ON THE BOARD OF DIRECTORS SHALL BE RESIDENTS OF
6 WASHINGTON COUNTY.

7 (2) TWO OF THE VOTING MEMBERS APPOINTED BY THE WASHINGTON
8 COUNTY BOARD OF COUNTY COMMISSIONERS UNDER SUBSECTION (C)(1)(III) OF THIS
9 SECTION MAY RESIDE OUTSIDE OF WASHINGTON COUNTY, BUT WITHIN 25 MILES OF
10 THE LOCATION OF THE FORMER FORT RITCHIE.

11 [(3) (i)] (F) (1) The term of an appointed member of the Board is [4]
12 2 years.

13 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
14 PARAGRAPH, AN APPOINTED MEMBER MAY NOT SERVE MORE THAN TWO
15 CONSECUTIVE TERMS.

16 (II) IF AN APPOINTED MEMBER SERVES A TERM OF OFFICE THAT IS
17 LESS THAN 2 YEARS, THAT TERM OF OFFICE MAY NOT BE INCLUDED AS A TERM OF
18 OFFICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

19 [(ii)] (3) The terms of appointed members shall be staggered to
20 ensure long-term continuity in Board action.

21 [(iii)] (4) At the end of a term, a member continues to serve until a
22 successor is appointed.

23 [(iv)] (5) A member who is appointed after a term has begun serves
24 only for the rest of the term and until a successor is appointed.

25 (6) A VACANCY ON THE BOARD OF DIRECTORS SHALL BE FILLED FOR
26 THE UNEXPIRED TERM IN THE SAME MANNER AS THE OFFICE WAS PREVIOUSLY
27 FILLED.

28 [(c)] (G) (1) (I) The Board shall elect one of its members as chairman, one
29 as vice chairman, and one as treasurer.

30 (II) THE CHAIRMAN AND VICE CHAIRMAN SHALL RESIDE IN
31 WASHINGTON COUNTY.

32 (2) [Eight] FIVE VOTING members of the Board constitute a quorum[,
33 but action may not be taken by less than the vote of eight members].

34 (3) A vacancy in the membership of the Board of Directors does not
35 impair the right of a quorum of the Board of Directors to exercise all rights and
36 perform all the duties of the Corporation.

1 (H) THE WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS MAY
2 REMOVE AN APPOINTED MEMBER OF THE BOARD FOR CAUSE.

3 5-1204.

4 (a) (1) The Board of Directors shall appoint, subject to approval of the Board
5 of County Commissioners, an Executive Director who shall serve at the pleasure of
6 the Board.

7 (2) The salary of the Executive Director shall be determined by the
8 Board.

9 (3) WHILE THE EXECUTIVE DIRECTOR IS EMPLOYED BY THE
10 CORPORATION, THE EXECUTIVE DIRECTOR MAY NOT:

11 (I) BE EMPLOYED OUTSIDE THE CORPORATION; OR

12 (II) RECEIVE COMPENSATION THAT WOULD CREATE A CONFLICT
13 OF INTEREST, AN APPEARANCE OF A CONFLICT OF INTEREST, OR IMPAIR THE
14 IMPARTIALITY AND INDEPENDENCE OF JUDGMENT OF THE EXECUTIVE DIRECTOR.

15 (4) THE EXECUTIVE DIRECTOR SHALL BE A RESIDENT OF WASHINGTON
16 COUNTY.

17 5-1205.

18 (A) The Corporation may:

19 (1) Adopt bylaws for the regulation of its affairs and the conduct of its
20 business;

21 (2) Adopt an official seal and alter it at its pleasure;

22 (3) Maintain offices that it designates at Fort Ritchie;

23 (4) Apply for and accept any loans, grants, or assistance of any character
24 from the federal government, State government, or local governments, or any private
25 sources;

26 (5) Make, execute, and enter into any contracts or other legal
27 instruments;

28 (6) Sue and be sued in its own name;

29 (7) Acquire, construct, develop, manage, market, reconstruct,
30 rehabilitate, improve, maintain, equip, lease as lessor or as lessee, repair, and operate
31 any project at Fort Ritchie;

32 (8) Acquire, purchase, hold, lease as lessee, and use any franchise,
33 patent, or license and any property whether real, personal, mixed, or tangible or

1 intangible, or any interest in such property, necessary or convenient for carrying out
2 the purposes of the Corporation;

3 (9) Sell, lease as lessor, transfer, and dispose of any property or interest
4 in it at any time acquired by it;

5 (10) Acquire, either directly or by or through any agreement with the U.S.
6 Army, by purchase or by gift or devise any lands, structures, property, whether real or
7 personal, rights, rights-of-way, franchises, easements, and other interests in lands,
8 including lands lying under water and riparian rights which are located within or
9 without the State that it deems necessary or convenient for the construction,
10 improvement, rehabilitation, or operation of a project, upon any terms and at any
11 prices that it considers to be reasonable;

12 (11) Borrow money for the purpose of financing or refinancing all or any
13 part of the cost of any one or more projects or for any other corporate purpose of the
14 Corporation; secure the payment of such borrowing or any part by pledge of or
15 mortgage or deed of trust on all or any part of its properties or revenues; combine
16 projects for financing;

17 (12) Fix, revise from time to time, and collect rates, rentals, fees, and
18 charges for the use of or for services and facilities provided or made available by the
19 Corporation;

20 (13) Enter with the permission of the owner upon lands, waters, or
21 premises for the purpose of making surveys, soundings, borings, and examinations to
22 accomplish any purpose authorized by this subtitle;

23 (14) Exercise any power usually possessed by private corporations in
24 performing similar functions, which is not in conflict with the Constitution and the
25 laws of this State; and

26 (15) Do all things necessary and convenient to carry out the powers
27 expressly granted by this subtitle.

28 (B) (1) ANY CHANGE TO THE CORPORATION'S BYLAWS MAY NOT BE
29 ADOPTED UNTIL A MAJORITY OF THE MEMBERS OF THE WASHINGTON COUNTY
30 BOARD OF COUNTY COMMISSIONERS APPROVE THAT CHANGE.

31 (2) (I) PRIOR TO THE CORPORATION ENTERING INTO A MASTER LEASE
32 AGREEMENT, THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT SHALL
33 REVIEW AND COMMENT ON THE MASTER LEASE AGREEMENT.

34 (II) THE CORPORATION MAY NOT ENTER INTO A MASTER LEASE
35 AGREEMENT UNTIL, FOLLOWING THE REVIEW UNDER SUBPARAGRAPH (I) OF THIS
36 PARAGRAPH, A MAJORITY OF THE WASHINGTON COUNTY BOARD OF COUNTY
37 COMMISSIONERS APPROVES THE MASTER LEASE AGREEMENT.

1 5-1206.

2 (a) (1) To accomplish the legislative intent of this subtitle, the Maryland
3 Economic Development Corporation may issue bonds, at any time and from time to
4 time, for the purposes of financing or refinancing all or part of the costs of a project.

5 (2) THE MARYLAND ECONOMIC DEVELOPMENT CORPORATION MAY NOT
6 ISSUE A BOND ON BEHALF OF THE CORPORATION UNTIL THE WASHINGTON COUNTY
7 BOARD OF COUNTY COMMISSIONERS APPROVES THE ISSUANCE OF THAT BOND.

8 5-1209.

9 (f) (1) Within the first 90 days of each fiscal year, the Corporation shall
10 make a report to the Governor, the Board of County Commissioners of Washington
11 County, the Department of Business and Economic Development, [and,] subject to §
12 2-1246 of the State Government Article, to the General Assembly, THE WASHINGTON
13 COUNTY DELEGATION, THE UNITED STATES CONGRESSMAN REPRESENTING THE
14 CONGRESSIONAL DISTRICT IN WHICH THE CORPORATION IS LOCATED, AND THE
15 UNITED STATES SENATORS REPRESENTING THE STATE.

16 (2) Each report shall set forth the complete operating and financial
17 statement covering its operations during the preceding fiscal year and shall
18 summarize the Corporation's activities.

19 5-1210.

20 (a) Except as otherwise provided in this section, in exercising its corporate
21 powers, the Corporation is exempt from the provisions of Articles 41 and 78A of the
22 Code; [§ 10-507 of the State Government Article;] and Title 2, Subtitles 2, 4, and 5,
23 Titles 3 and 4, Title 6, Subtitle 1, Title 7, Subtitles 1, 2, and 3, §§ 8-127, 8-128, and
24 8-129, Title 8, Subtitle 1, and Title 10, and Division II of the State Finance and
25 Procurement Article, and may carry out its corporate purposes without obtaining the
26 consent of any department, board, or agency of the State.

27 5-1211.

28 (A) MEETINGS OF THE BOARD OF DIRECTORS ARE SUBJECT TO TITLE 10,
29 SUBTITLE 5 OF THE STATE GOVERNMENT ARTICLE.

30 (B) IN ACCORDANCE WITH § 10-507 OF THE STATE GOVERNMENT ARTICLE,
31 THE BOARD OF DIRECTORS SHALL HOLD AT LEAST ONE MEETING A YEAR IN WHICH:

32 (1) AN INDIVIDUAL OF THE GENERAL PUBLIC MAY ADDRESS THE BOARD
33 OF DIRECTORS WITH ANY CONCERNS THE INDIVIDUAL MAY HAVE REGARDING THE
34 CORPORATION; AND

35 (2) THE BOARD OF DIRECTORS SHALL PROVIDE AN OVERVIEW TO THE
36 GENERAL PUBLIC OF THE DEVELOPMENTS OF THE CORPORATION SINCE THE LAST
37 PUBLIC MEETING.

1 SECTION 2. AND BE IT FURTHER ENACTED, That:

2 (a) (1) The term of office for an individual serving as a voting member of the
3 Board of Directors for the PenMar Development Corporation on the date of enactment
4 of this Act, shall expire on that date.

5 (2) The term of office for each voting member of the Board of Directors
6 for the PenMar Development Corporation who is appointed under subsection (b) of
7 this section shall commence on the next day following the date of enactment of this
8 Act.

9 (b) The terms of the initial members of the Board of Directors for the PenMar
10 Development Corporation shall expire as follows:

11 (1) one member appointed by the House members of the Washington
12 County Delegation on June 30, 2005;

13 (2) one member appointed by the Washington County Board of County
14 Commissioners on June 30, 2005;

15 (3) one member appointed by the House members of the Washington
16 County Delegation on June 30, 2006;

17 (4) one member appointed by the Senate members of the Washington
18 County Delegation on June 30, 2006;

19 (5) two members appointed by the Washington County Board of County
20 Commissioners on June 30, 2006;

21 (6) one member appointed by the Senate members of the Washington
22 County Delegation on June 30, 2007; and

23 (7) two members appointed by the Washington County Board of County
24 Commissioners, including one representative of the Hagerstown-Washington County
25 Economic Development Commission, on June 30, 2007.

26 (c) (1) The terms of office for the nonvoting members on the Board of
27 Directors for the PenMar Development Corporation shall commence on the day after
28 the date of enactment of this Act.

29 (2) The initial terms of office for the appointed nonvoting members on
30 the Board of Directors for the PenMar Development Corporation shall end on June
31 30, 2007.

32 SECTION 3. AND BE IT FURTHER ENACTED, That the requirements for the
33 Executive Director for the PenMar Development Corporation under § 5-1204(a)(3)
34 and (4) of Article 83A of the Maryland Annotated Code, as enacted by this Act, do not
35 apply to the individual who is the Executive Director on the date of enactment of this
36 Act. These restrictions shall apply to any Executive Director appointed by the Board

1 of Directors of the PenMar Development Corporation after the date of enactment of
2 this Act.

3 SECTION 4. AND BE IT FURTHER ENACTED, That the term limits
4 provided for under this Act shall not apply to any term of office served on the Board
5 of Directors for the PenMar Development Corporation prior to the date of enactment
6 of this Act.

7 SECTION 5. AND BE IT FURTHER ENACTED, That this Act is an emergency
8 measure, is necessary for the immediate preservation of the public health or safety,
9 has been passed by a yea and nay vote supported by three-fifths of all the members
10 elected to each of the two Houses of the General Assembly, and shall take effect from
11 the date it is enacted.